



United States Department of Agriculture
Rural Development

Rural Business-Cooperative Service Rural Housing Service Rural Utilities Service
Washington, DC 20250

RD AN No. 3593 (1924-A)
December 1, 2000

TO: Rural Development State Directors
Rural Development Managers
Community Development Managers
National Office Officials

ATTN: All Rural Housing and Business Programs Staff

FROM: James C. Kearney
Administrator
Rural Housing Service

Wilbur T. Peer
Acting Administrator
Rural Business - Cooperative Service

SUBJECT: Residential Lead-Based Paint Hazard Reduction

PURPOSE AND INTENDED OUTCOME:

This Administrative Notice (AN) provides guidance to Rural Development staff on implementation of the Housing and Urban Development's (HUD) Final Rule on Lead-Based Paint (LBP) Hazards in Federally Owned Housing and Housing Receiving Federal Assistance (hereinafter, the "LBP regulation"). This guidance is intended to simplify and expedite our efforts to comply with the final rule on LBP, which took effect on September 15, 2000. This AN does not prohibit or restrict the financing of homes constructed prior to 1978.

COMPARISON WITH PREVIOUS AN:

No previous AN has been issued on this subject.

EXPIRATION DATE:
December 31, 2001

FILING INSTRUCTIONS:
Preceding RD Instruction 1924-A

BACKGROUND:

The Environmental Protection Agency (EPA) and HUD were tasked with promulgating rules focused on the control of LBP hazards. When fully implemented, these rules will greatly reduce the number of children exposed to harmful levels of lead associated with paint, dust, and bare soil found in and around older homes. Our primary focus in this AN is compliance with the LBP regulation promulgated by HUD.

This new regulation was issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, (title X (“ten”) of the Housing and Community Development Act of 1992). Sections 1012 and 1013 of title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, the basic law covering lead-based paint in Federally associated housing. The new regulation appears within title 24 of the Code of Federal Regulations as part 35 (24 C.F.R. part 35).

This LBP regulation sets out specific requirements for Federally owned residential property and housing receiving Federal assistance. The LBP regulation stresses identification of hazards, notification to occupants of the existence of these hazards, and control of those hazards.

AGENCY ADOPTION OF TITLE X

The proposed rule, *Environmental Policies and Procedures* (7 CFR part 1940, subpart S) eventually to be a replacement for the current Agency environmental rule found at 7 C.F.R. part 1940, subpart G, was published in the Federal Register on September 14, 2000. The new rule includes the applicable LBP requirements contained in 24 CFR part 35. When final, it will move the Agency’s lead-based paint compliance requirements for the Rural Housing Service and the Rural Business-Cooperative Service (hereinafter referred to as Rural Development) from RD Instruction 1924-A, Exhibit H, to RD Instruction 1940-S.

The following table identifies the subparts of the new LBP regulation adopted by Rural Development and the various programs that are affected. These subparts replace what are presently in RD Instruction 1924-A, Exhibit H, and take precedence over what are presently in all Rural Development instructions and handbooks concerning lead-based paint. The requirements of these subparts are applicable to all housing constructed prior to 1978 that is financially assisted by the Agency or is being sold by the Agency. The requirements in this Administrative Notice are to be used until RD Instruction 1940-S, *Environmental Policies and Procedures*, has been published as a final rule.

LBP COMPLIANCE ADOPTED SUBPARTS MATRIX		
Subpart	Programs Impacted	Title of Subpart
A ¹	502, 514, 515, 516, 538, CF, B&I	Disclosure of Known LBP Hazards Upon Sale or Lease of Residential Property
B ¹	502, 504, 514, 515, 516, 521, 533, 538, CF, B&I	General LBP Requirements and Definitions
C ²	502, 514, 515, 516, CF, B&I	Disposition of Residential Property Owned by a Federal Agency Other Than HUD
D ²	514, 515, 516, 521, 538, CF, B&I	Project-based Assistance Provided by a Federal Agency Other Than HUD
J ²	502 504, 533, 514, 515, 516, CF, B&I	Rehabilitation (applicable sections)
R ¹	502, 504, 514, 515, 516, 521, 533, 538, CF, B&I	Methods and Standards for LBP Hazard Evaluation and Hazard Reduction Activities

Footnotes

- 1. Applies to all residential housing in Rural Development programs if the house was built prior to 1978.*
- 2. Provides specific requirements depending on whether housing is being disposed of or assisted by Agency, type and amount of financial assistance, age of structure, whether dwelling is rental or owner-occupied.*

IMPLEMENTATION STRATEGY

Implementation of the requirements of the new LBP regulation occurred on September 15, 2000, with the Rural Development goal being full compliance with the regulation. The requirement for lead paint disclosure under the old LBP regulation remains unchanged. With implementation of the new HUD issued LBP rule at 24 CFR part 35, disclosure requirements moved to subpart A. Historically, ensuring lead paint disclosure has been the Agency's main compliance requirement and will continue to be the situation for the majority of Agency program activities. In addition to lead paint disclosure, Agency activities that include rehabilitation or the sale of real estate owned (REO) property will have additional compliance requirements under the new LBP regulation. A "Lead-Based Paint Compliance Key" (Attachment 1) is provided as a step-by-step guide for identifying actions the Agency must take to achieve full compliance with the new requirements of the LBP regulations in all affected programs. The key is intended for use at the start of the loan or grant making process and prior to foreclosure; and will be used by all programs except Guaranteed Single Family Housing prior to commitment of Agency resources. Guaranteed Single Family Housing will use this key during lender compliance review monitoring.

A computer-based version of the LBP Compliance Key is in the final stages of development and will be made available when complete. This tool will allow the questions from the LBP Compliance Key to be answered on the computer, and the responses will be used to generate a project specific report that outlines the compliance requirements for each individual project. A computer based training application is also being developed to provide a general overview of the new regulation, its impacts, and how to deal with them. In addition, a LBP question and answer document will also be maintained on the Rural Development intranet in the RHS documents library in the LBP category (Attachment 2) to assist Rural Development staff with the task of complying with the new LBP regulation.

State Directors should appoint several staff members to a state *LBP Support Team*. We recommend that the *LBP Support Team* be composed of both technical representatives and program representatives. These individuals will serve as the state level contacts, and should become familiar with the specific requirements of the adopted subparts of title X, as they relate to each program. The latest news on LBP compliance will be e-mailed to these individuals prior to general dissemination. This team will also serve as the point-of-contact between the state and National Office, and will be invited to participate in the development of tools to aid the Agency with LBP compliance issues. A list of the *LBP Support Team* members (name, phone number, e-mail) should be e-mailed to the National Office Program Support Staff (see Points-of-Contact below) within 2 weeks of receipt of this AN.

HUD's TRANSITION ASSISTANCE POLICY

HUD has developed a transition assistance policy for jurisdictions with inadequate capacity. A jurisdiction is defined as a Community Development Block Grant (CDBG) Entitlement Grantee or for non-entitlement areas, the State CDBG Grantee, or Indian Tribe. Inadequate capacity is defined as a jurisdiction which has a lack of adequate service providers that target their resources to evaluate and reduce LBP hazards in housing which places children most at risk. HUD's transition assistance is broken down into three components:

- 1) Assistance for Jurisdictions with Inadequate Capacity.
 - Effective Period: September 15, 2000, to March 15, 2001
- 2) Phase In Period for Post-1960 Properties Receiving Tenant-Based Assistance
 - Effective Period: September 15, 2000, to September 15, 2001
- 3) Phase In Period for Elderly-Occupied Properties Receiving Federal Rehabilitation Assistance Greater Than \$25,000
 - Effective Period: September 15, 2000, to September 15, 2001

No submission by a jurisdiction is required to receive transition assistance for components 2 and 3 above.

If Rural Development is providing financial assistance in a jurisdiction that is granted transition assistance, Rural Development must comply with the LBP regulations that were effective before September 15, 2000, (for RHS this is Appendix 12 of RD Handbook HB-1-3550 and Exhibit H or RD Instruction 1924-A).

TYPES OF HOUSING AND ACTIVITIES NOT COVERED

- 1) Non-residential property (see “*Special Considerations for Child Occupied Facilities*” below).
- 2) Housing built after January 1, 1978.
- 3) Multi-family housing exclusively for elderly or those with disabilities, unless a child under the age of 6 is expected to live there.
- 4) Zero-bedroom dwellings (e.g., efficiency apartments, single-room occupancy housing, dormitories, military barracks, etc.).
- 5) Property found free of LBP by a certified LBP inspector.
- 6) Property where all LBP has been removed.
- 7) Unoccupied housing that will remain vacant until it is demolished.
- 8) Any rehabilitation or improvement of the house that does not disturb a painted surface.

POSSIBLE FUNDING SOURCES FOR COMPLIANCE ACTIVITIES

Properties owned by Rural Development are eligible for Program Loan Cost Expense Funds, and Rural Development's environmental funds to reduce LBP hazards. The environmental funds are intended to supplement the Program Loan Cost Expense Funds and must be requested from the National Office on a case-by-case basis. The funding of LBP hazard reduction activities is also an eligible loan cost for our borrowers. Loan funds may be provided for LBP hazard reduction at purchase or as a subsequent loan. In addition, grants may be available to our borrowers from other Federal, state, local, and private sources. We strongly encourage each state to identify sources of funding within their service areas and provide this information to our borrowers.

SPECIAL CONSIDERATION FOR CHILD-OCCUPIED FACILITIES

Rural Development programs (e.g., Business, Community Facilities) that provide Federal assistance for child-occupied facilities must comply with the EPA's LBP requirements found in 40 CFR part 745, subpart L. A child-occupied facility is defined as a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided

that each day's visit lasts 3 hours and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms.

STATE AND LOCAL LAWS

This AN will not relieve the seller, lessor, owner, or agent from any responsibility for compliance with state or local laws, ordinances, codes, or regulations governing LBP or LBP hazards. Rural Development assumes no responsibility for ensuring compliance with such state or local requirements.

LEAD-BASED PAINT INFORMATION SOURCES

The EPA, HUD, and Consumer Product Safety Commission have jointly produced a LBP awareness pamphlet entitled *Protect Your Family From Lead in Your Home*. This pamphlet is a good source of information on LBP hazards found in the home, and it is available in English and Spanish. This pamphlet can be obtained from the Rural Development Property and Supply Management Division. To request copies of this pamphlet, complete a RD Form 2024-4, *Request for Forms/Supplies/Pamphlets Listed in Rural Development Supply Catalogue* (Stock #494, English or #494-S, Spanish), and fax it to 1-800-336-3604. This pamphlet, along with sample disclosure forms, is available on the HUD Internet site (www.hud.gov/lea/leadhelp.html). In addition, the new LBP regulation is also available from the HUD Internet site (www.hud.gov/lea/leadwnlo.html).

Contact your regional EPA office to identify companies that are certified to perform LBP inspections, risk assessments, and abatement in your state. In addition, the Program Support Staff can aid with the identification of contractors, scopes-of-work, government cost estimates, and other related support. Reference information will be posted on the Rural Development Intranet, Rural Housing Service's document library.

All staff members who will be involved with LBP compliance activities are encouraged to complete "HUD's Visual Assessment Training Course," which is an Internet-based (www.hud.gov/lea/lbptraining.html) awareness course.

POINTS OF CONTACT

Please direct all questions pertaining to this AN to Sam Hodges, Architect, or Brian LaFlamme, Environmental Specialist, of the Program Support Staff. You can reach Sam Hodges at (202) 720-9653 and Brian LaFlamme at (202) 720-9656. In order to expedite our response to your questions, we have also created the e-mail account

“lead.help@rdmail.rural.usda.gov.” In addition, a 'Lead-Based Paint' category has been established under Rural Housing Service's discussion group on the Rural Development Intranet site.

2 Attachments

1. Lead-Based Paint Compliance Key
2. Lead-Based Paint Questions and Answers (Examples)